

ESTATE OF WAHWERSEE R. WERQUEYAH

IBIA 74-23 (Supp.)

Decided August 24, 1976

Appeal from an Administrative Law Judge's order denying petition for rehearing and allowing rental claim against decedent's estate.

Affirmed.

1. Indian Probate: Claim Against Estate: Generally

Appellant fails to refer to any persuasive authority which directs against the submission of a general claim against a deceased Indian's trust estate on some one else's behalf. In the absence of a specific regulation to this effect in 43 CFR 4.250 et seq., regarding claims against estates, we believe it would be inequitable for this Board to nullify an individual Indian's proven claim on the merely technical basis that the claim was filed for and not by the claimant.

2. Indian Probate: Claim Against Estate: Generally

In fairness to individual Indian claimants who have had neither the benefit of their own counsel nor guidance from the Administrative Law Judge which could have averted a correctable alleged error in the manner of a claim presentation, it is no stretch of the Secretary's administrative authority to uphold such a claim on appeal despite a showing of such possible error.

APPEARANCES: Amos E. Black III, Esq., for appellant, Mattie Wahwersee.

OPINION BY BOARD MEMBER HORTON

Mattie Wahwersee, widow of Wahwersee R. Werqueyah, deceased Comanche Allottee No. 1574, appeals from an order entered January 9, 1976, by Administrative Law Judge Jack M. Short which allows a rental claim against the estate of her deceased husband to Linda Lou Geionety, a grandniece of the decedent. The Board has reviewed the record on appeal, including appellant's legal brief, and we conclude that no error has been committed in the allowance of the contested claim.

The original hearing in the probate of decedent's estate was held March 7, 1973. The decedent's last will and testament, dated September 28, 1971, was approved by order of the Administrative Law Judge on April 10, 1973. As a result of procedural irregularities in the initial consideration of claims now before the Board, we remanded this case 2 years ago for a full rehearing on this limited issue. Estate of Wahwersee R. Werqueyah, 3 IBIA 28 (decided August 19, 1974). The rehearing on rental claims was held June 18, 1975, at the Anadarko Agency in Oklahoma.

On October 31, 1975, Judge Short entered his Order on Rental Claimants Rehearing. This order recites that decedent and two predeceased brothers, Day Werqueyah (d.o.d. July 2, 1971) and Bert Werqueyah (d.o.d. April 5, 1968), had each owned an undivided one-third (1/3) interest in Comanche Allotment No. 1570 and Comanche Allotment No. 1571. The decedent reserved exclusive possession and use of Allotment No. 1570 in 1945 and Allotment No. 1571 in 1965; the reserved right in each allotment was retained by the decedent until his death on November 13, 1971.

Judge Short ruled in the above order that because the decedent did not "release his reserved right to the exclusive possession and use" of either Comanche allotment, he incurred a legal obligation to compensate his co-owners their pro rata share of a fair rental value for the property. Since full compensation was not paid by the decedent to the co-owners, or upon their deaths to their surviving heirs, the decedent's estate was found liable to the heirs of the co-owners in sums commensurate with their inherited interest. However, in accordance with the state statute of limitations, claims for rental value were only allowed for a 3-year period immediately prior to decedent's death.

Judge Short's October 31, 1975, order granted rental claims to eight persons found to be heirs of the decedent's co-owners, seven of whom are heirs of Bert Werqueyah. On December 22, 1975, Mattie Wahwersee, appellant herein, filed a timely petition for rehearing, based on newly discovered evidence, which was styled "Application for Rehearing of the Claims of One Pearl Werqueyah Against Decedent's Estate." Pearl Werqueyah is the surviving

widow of Day Werqueyah. No review was sought by Mattie Wahwersee regarding the award of rental claims to the seven heirs of Bert Werqueyah.

Mattie Wahwersee's December 22, 1975, petition alleged that the rental claim filed by Pearl Werqueyah on March 28, 1972, is false and fraudulent because, contrary to recitations of ownership of an interest in the real property involved, she owned no such interest and thus lacked standing to file a claim. On January 9, 1976, Judge Short entered an Order Denying Petition for Rehearing of the Pearl Werqueyah Claim and Modification Order. The findings and conclusions reached by Judge Short in this order form the basis of the present appeal and are thus quoted at length:

Petitioner's request for a rehearing prompted me to examine the record of the probate in the Estate of Day Werqueyah * * *. The Order Approving Will and Decreeing Distribution was entered therein on June 30, 1972. Pearl Werqueyah, as the wife of the decedent, was determined to be an heir at law. But, decedent died testate and devised his undivided 1/3 interest in the allotments at issue to his granddaughter, Linda Lou Geionety.

I find that Pearl Werqueyah does not now and never has owned any interest in the allotments involved herein.

I further find that Pearl Werqueyah filed her claim in March 1972, prior to the Order of June 30, 1972, in her husband's estate, in good faith. Her claim states, "* * * for the heirs of Day Werqueyah, deceased"; the accompanying affidavit states, "I claim on behalf of my deceased husband * * *"; and, the instrument entitled "For Rent's Profit's and Exclusion" predates June 30, 1972. As a layman, Pearl Werqueyah couldn't and shouldn't be expected to comprehend or anticipate the legal consequences presented by her husband's estate, especially before a judicial determination had been made therein. As a widow she made a claim on behalf of her husband and could easily have thought she had inherited an interest in the land involved because she is an heir at law.

Moreover, she is one of three residuary beneficiaries as to the realty in her husband's estate and the sole residuary beneficiary of the personal and mixed property.

Therefore, I find that Pearl Werqueyah had standing to file her claim even though it now develops she is not entitled to any of the proceeds of said claim.

I further find that the language in the claim, to-wit: "* * * for the heirs of Day Werqueyah, deceased" is broad enough to include his devisee of the realty involved.

I conclude, as a matter of law, that Linda Lou Geionety, devisee of Day Werqueyah's interest in the allotments involved herein, is entitled to a full one-third (1/3) of the rental claims allowed, to-wit: \$1,000.00, because a devisee acquires whatever right, title or interest the testator had, together with all his equities or choses in action pertaining to the estate. 96 C.J.S. Wills, § 1099. The Order on Rental Claimants Rehearing dated October 31, 1975, should be modified accordingly. [January 9, 1976, Order, pp. 1-2.]

Mattie Wahwersee's appeal of Judge Short's January 9, 1976, order alleges the following two grounds: 1) that Pearl Werqueyah lacks authority to file and present any claim against decedent's estate for anyone but herself, and 2) that Linda Lou Geionety is barred from presenting any claim against decedent's estate as a result of her waiver of any claims.

[1] Appellant fails to refer to any persuasive authority which directs against the submission of a general claim against a deceased Indian's trust estate on someone else's behalf. In the absence of a specific regulation to this effect in 43 CFR 4.250 et seq. regarding claims against estates, we believe it would be inequitable for this Board to nullify an individual Indian's proven claim on the merely technical basis that the claim was filed for and not by the claimant.

This matter would be viewed differently if the record disclosed a specific waiver by Linda Lou Geionety to any claims to which she might be entitled. No such evidence exists, however. Appellant submits that the attendance of Linda Lou Geionety at various hearings at which she never addressed the Judge denotes a waiver of all claims on her part. To the contrary, however, she would not have attended a probate hearing concerning the estate of a granduncle as a potential heir at law. Her interest obviously stemmed from a creditor's role and in view of the active participation by Pearl Werqueyah "for the heirs of Day Werqueyah" in the probate proceedings, Linda Lou Geionety apparently saw no need to intercede. Since none of the Indian rental claimants seem to have had the benefit of counsel at the probate proceedings the

possible consequences, if any, of such informal representation may not have been understood. Further, the Administrative Law Judge who first heard this issue, John F. Curran, now retired, was apprised from the beginning that Pearl Werqueyah was presenting a rental claim to include the heirs of her deceased husband. The record contains no admonition against this procedure which implies as a minimum that this plan received Judge Curran's tacit approval. Lastly, had Judge Curran remembered that the probate of the estate of Day Werqueyah, who predeceased the decedent in this case by 4 months, resulted in a testamentary disposition of property to Linda Lou Geionety, testator's granddaughter, rather than Pearl Werqueyah, testator's widow, these two parties could have been instructed when these claims were first received that Linda Lou Geionety would be expected to file her own claim, if in fact such procedure was deemed required.

[2] In fairness to individual Indian claimants who have had neither the benefit of their own counsel nor guidance from the Administrative Law Judge which could have averted a correctable alleged error in the manner of a claim presentation, it is no stretch of the Secretary's administrative authority to uphold such a claim on appeal despite a showing of such possible error.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Administrative Law Judge Jack M. Short's January 9, 1976, Order Denying Petition for Rehearing of the Pearl Werqueyah Claim and Modification Order, be, and the same is hereby AFFIRMED and the appeal of Mattie Wahwersee from said Order, be, and the same is hereby DISMISSED.

This decision is final for the Department.

Done at Arlington, Virginia.

Wm. Philip Horton
Member of the Board

I concur:

Alexander H. Wilson
Administrative Judge